



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: RJS Constructors

File: B-257457

Date: October 7, 1994

Ronald R. Sinn for the protester.
Lester Edelman, Esq., Department of the Army, Office of the Chief of Engineers, for the agency.
Adam Vodraska, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The procuring agency improperly allowed the upward correction of the awardee's low bid, to within .13 percent of the bid of the next apparent low bidder, where the only evidence presented by the awardee, its bid worksheet, contained significant discrepancies and inconsistencies, such that the worksheet was not in good order.

DECISION

RJS Constructors protests the award of a contract to Blick Construction Co., Inc. under invitation for bids (IFB) No. DACW25-94-B-0064, issued by the United States Army Corps of Engineers for exterior pump prime mover replacements. RJS contends that Blick was improperly permitted to upwardly adjust its low bid price prior to award.

We sustain the protest.

The IFB requested single, lump-sum bids for removing two existing diesel engines; rebuilding and reinstalling gear drives; providing and installing new drive shafts; new electric motors, controls, and necessary motor base modifications; and replacing the electrical service entrance.

The following five bids and the government's estimate were received at the April 7, 1994, bid opening:

Blick	\$276,379
RJS	\$376,463
Bidder A	\$386,700
Bidder B	\$397,900
Government's Estimate	\$421,351
Bidder C	\$446,000

On April 12, Blick's president, C. John Blickhan, notified the contracting officer by telephone that he had made a mistake in his bid and requested the upward correction of his bid price. By letter of April 12, the contracting officer requested that Mr. Blickhan supply documentation--such as original worksheets, subcontractor quotations, or price lists--supporting his mistake claim. In response, Mr. Blickhan provided a page from his bid notebook, which he stated was the only workpaper Blick had to establish the bid mistake and its intended bid.¹ The workpaper's handwritten entry for this project appears as follows:

"4-5-94 LimaLake DACW25-94-B-0064

"General Pump Overhaul Pump 33111	35000
Motors 450 H.P. 21161 [revised from 18618]	22000
Gear Replace Amarrillo 17960	20000
Motor Brackets & Base	3000
Testing 8400-3500-2000	14000
Set Gear Boxes G.P. 3000	3000
Electric [Supreme]	138160
Blicks Remove & Replace Pumps	125000
Freight	9000
Drive Shaft 802 ea.	1800
Bond	5000
	276379"

Along with the worksheet, Mr. Blickhan sent the Corps an affidavit attesting to the worksheet's authenticity. Mr. Blick informed the agency that he had hastily prepared the bid late on the day before bid opening because he was waiting for prices from suppliers and because his secretary was leaving for vacation the next day, and she was to type the bid form submitted to the Corps. Mr. Blickhan stated

¹Mr. Blickhan attested that the submitted worksheet was the only workpaper used to prepare the bid except for scratch paper used to jot down figures for Blick's labor expenses, crane time, and bookkeeping time. Mr. Blickhan stated that he normally transposes these figures to the worksheet and does not keep the scratch paper and that he did not do so in this case.

that he made an arithmetical error when adding the figures for the various work items listed on his bid worksheet and did not double-check his addition before submitting the bid. Mr. Blickhan stated that Blick's intended bid price was \$375,960, which is the figure that is obtained by adding all the entries included on the worksheet, and that he was not sure how he reached the incorrect total of \$276,379, but since the arithmetic was not double-checked, the error was not discovered and the wrong figure was used in the bid. Blick did not provide quotes or other documentation from any of its purported suppliers or subcontractors.

The contracting officer confirmed that the handwritten entries, when added together, totaled \$375,960 and determined that the submitted worksheet and Blick's affidavit presented clear and convincing evidence of a mistake, and of the intended bid. The Division Commander affirmed the contracting officer's determination and on May 19, the Corps accepted Blick's corrected bid of \$375,960. RJS's protest followed.

RJS does not dispute that there was a bid mistake but argues that Blick's workpaper is not in good order and does not demonstrate by clear and convincing evidence Blick's intended bid price. RJS contends that there is insufficient documentation presented by Blick to permit the agency to allow Blick to upwardly adjust its bid price to within \$503, or .13 percent, of RJS's next low bid.

An agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3(a); Weather Data Servs., Inc., B-241621, Feb. 19, 1991, 91-1 CPD ¶ 185. In considering upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. Great Lakes Dredge & Dock Co., B-248007.2, Sept. 3, 1992, 92-2 CPD ¶ 151. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. M. A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296. However, the closer an intended bid comes to the next low bid, the more difficult it is to establish the amount of the intended bid, and the more closely we will scrutinize the claim of mistake. See J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ 353; Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606.

Here, we find unreasonable the contracting officer's determination that Blick's workpaper constituted clear and convincing evidence of Blick's alleged intended bid price.

It is true that the entries on Blick's workpaper, as submitted to the contracting officer, do not total \$276,379--the amount bid, and that if the eleven entries listed on the bid worksheet are added together, the total is \$375,960--the amount Blick asserts it intended to bid. Nevertheless, simply totaling the entries does not clearly and convincingly indicate Blick's intended bid because, as described below, Mr. Blickhan's handwritten worksheet is not in good order and is not credible.

First, the worksheet does not include any entries for profit or overhead, nor is there any explanation in the record from Blick as to whether its worksheet provided for profit and overhead, and if so, how these items were calculated. While the Corps states that "Blick's profit and overhead apparently have also been included" in the work to be performed by Blick, i.e., "Blick's remove and replace pumps," there is no evidence in the record that this is so or how it was to be calculated. Generally, clear and convincing evidence of an intended bid price cannot be ascertained where the workpapers of a bidder seeking correction do not adequately account for profit or overhead in the bid, since an unexplained failure to provide such customary items calls into question what bid price was actually intended. See Southwest Marine, Inc., B-225686, May 14, 1987, 87-1 CPD ¶ 510; Franco, B-214124, May 1, 1984, 84-1 CPD ¶ 488.

Next, Blick's worksheet lacks consistency or correlation between the costs allegedly quoted by suppliers and subcontractors² and the amounts entered on the worksheet, such that there is no pricing methodology or suggestive pattern evident to explain how Blick calculated each of its work entries. For example, while Blick stated that he "rounded up" quotes he received from some suppliers, he did not consistently round up all quotes he received. More significantly, there is no discernible pattern to the mark-ups for the quotes that Blick did "round up." Instead, Blick's mark-ups on the worksheet ranged from 3.9 percent to 11.4 percent.

Finally, two entries on the worksheet in the record appear to have been altered. Specifically, the second digit of Blick's "Motors 450 H.P." entry (the second 2 in \$22,000)³

²Blick did not provide any documentation supporting the quotes it asserts it received from suppliers or subcontractors.


³The record indicates that the supplier may have revised its quotation from \$18,618 to \$21,161, as was noted on Blick's
(continued...)

and the first digit of the cost estimate for the "freight" entry (the 9 in \$9,000) appear to have been changed. There is no explanation in the record as to when these changes were made, other than Mr. Blickhan's sworn statement that the worksheet provided to the Corps had not been altered in any way since bid opening. While it is likely true that these changes were made while Mr. Blickhan was putting together his bid, the fact remains that there is no explicit explanation in the record as to when and why these changes were made.

In sum, we find, given these significant and unexplained discrepancies and uncertainties in Blick's worksheet, that the documentation provided by Blick did not provide the Corps with clear and convincing evidence of Blick's intended bid price. This is particularly so given the closeness of Blick's alleged intended bid price to that of the next apparent low bidder and the fact that a change of merely \$504 in Blick's intended worksheet would have displaced Blick as the apparent low bidder. Accordingly, we find that the upward correction of Blick's bid price should not have been allowed.

We recommend that the Corps consider the feasibility of terminating Blick's contract for the convenience of the government and making award to RJS, if that bidder is otherwise eligible. If termination of Blick's contract is not practicable, RJS is entitled to recover its costs of bid preparation. 4 C.F.R. § 21.6(d)(2) (1994). We also find that RJS is entitled to recover the costs of filing and pursuing this protest, including reasonable attorney's fees. 4 C.F.R. § 21.6(d)(1). RJS should file its claim, detailing and certifying the time expended and costs incurred, directly with the Corps within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.


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¹(...continued)

worksheet, and that Blick possibly revised its price accordingly (from \$20,000 to \$22,000). However, the original number can not be determined with any certainty from examining the worksheet.